

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Citizens Telecommunications Company of California, Inc. (U 1024 C), dba, Frontier Communications of California, to Establish Price Floors For Local Measured Usage, Extended Area Service and Zone Usage Measurement.

Application 05-01-020
(Filed January 20, 2005)

OPINION APPROVING ALL PARTY JOINT STIPULATION**Summary**

In this decision, the Commission approves a joint stipulation between Citizens Telecommunications Company of California dba Frontier Communications (Frontier) and SureWest Televideo dba SureWest Broadband (SureWest), the only other party to the proceeding. The joint stipulation specifies the price floors for residential local measured service, unlimited extended area service, unlimited zone usage measurement service, and unlimited residential intraLATA (local) toll service.

Background

Frontier filed this application seeking Commission approval of permanent price floors for the following services:

1. Local Measured Service
2. Extended Area Service
3. Zone Usage Measurement Service

Frontier stated that pursuant to Decision (D.) 94-09-065 (the IRD decision) Frontier must have in place a Commission-approved price floor prior to exercising pricing flexibility for any Category II service. Frontier does not currently have a price floor for these three services. Frontier also stated that it is experiencing increased competition from other local exchange service providers, particularly in its Elk Grove market, and that price floors are necessary to enable it to meet this competition.

On February 28, 2005, SureWest protested Frontier's application. SureWest urged the Commission to undertake a thorough review of Frontier's proposed price floors. SureWest also protested Frontier's currently pending Advice Letter (AL) 902 on February 22, 2005, and pointed out that it proposes to use the price floors at issue in this application on an interim basis. SureWest recommended consolidating this application with AL 902.

On April 7, 2005, the assigned Administrative Law Judge (ALJ) issued a ruling setting a prehearing conference and directing the parties to meet and work cooperatively to fully articulate any disputed issues of material fact and legal or policy issues requiring resolution in this proceeding¹. Subsequently, the parties informed the ALJ that they had reached an agreement in principle and that the prehearing conference would be unnecessary.

On June 8, 2005, the parties filed and served a joint stipulation², which included agreed-upon price floors, two supplements to Frontier's AL 902, and

¹ On April 5, 2005, Frontier filed supplemental AL 902A to remove restrictive wording on the use of the optional local calling plan for accessing the Internet and/or for telecommuting.

² The joint stipulation with redacted Exhibit 1 is Attachment A to this decision.

the supplemental testimony of Randall J. Brockmann explaining the revised cost floors.

Confidential Exhibit 1 to the joint stipulation includes the specific price floors for local measured service, unlimited extended area service, unlimited zone usage measurement service and unlimited residential local toll service included in the optional local calling plan proposed in AL 902. Frontier and SureWest submitted a motion seeking to have Confidential Exhibit 1, the references to specific amounts in the Brockmann testimony, and Brockmann testimony Exhibits A and B excluded from the public record and held under seal. On July 28, 2005, the assigned ALJ issued a ruling granting the request in part. The ALJ found that the floor for local measured service was the difference between two publicly available amounts, i.e., the tariffed rates for residential local measured service and flat rate residential service, and thus could be readily calculated with this public information. Consequently, that floor did not qualify for confidential treatment. In all other respects, the motion was granted.

Terms of the Joint Stipulation

The joint stipulation retains Frontier's proposed price floors for extended area service and zone usage measurement service. Additionally, the joint stipulation includes modified price floors for local measured service and unlimited residential local toll service.

Pursuant to the joint stipulation, Frontier filed supplemental AL 902B to modify its AL 902 to increase the price from \$10.35 per month to \$17.50 per month for the optional local calling plan proposed by that Advice Letter. The joint stipulation also requests that the Commission consolidate AL 902 with this application. With the modifications to the filings, SureWest withdraws its motion to intervene in this proceeding and waives its right to protest AL 902.

The joint stipulation also specifies that Frontier will use the floors adopted in this proceeding for services included in its ALs 898, 899, and 900. However, the parties do not request that these Advice Letters be consolidated with the application. Effective May 12, 2005, the Telecommunications Division approved ALs 898, 899 and 900, and respective supplements, on an interim basis pending resolution of this application. Today's approval of the floors renders the interim approval permanent. Frontier should file an advice letter within 20 days from the effective date of this decision to remove the footnote reference in ALs 898, 899, and 900, and respective supplements, which currently indicates that the advice letters are approved on an interim basis.

Evidentiary Support for the Joint Stipulation Price Floors

In the IRD decision, the Commission prohibited incumbent local exchange carriers, such as Frontier, from setting retail prices for competitive services below cost. Accordingly, incumbent local exchange carriers submitted cost studies and other information to establish the applicable price floor for each service prior to exercising pricing flexibility.³ With this application, Frontier sought Commission approval for its revised price floor for unlimited residential local toll service.

Frontier supplied the testimony of its Manager of Economic Costing, Randall J. Brockmann, in support of the joint stipulation price floors. Brockmann's testimony explained that the cost floor for local measured service was computed by subtracting Frontier's current tariffed price for Residence Local Measured Service Rate of \$9.60 from Frontier's current tariffed price for Flat Rate

³ D.94-09-065, OP 63, 56 CPUC 2nd at 290.

Residential Service of \$17.85. The difference, \$8.25, was presumed to be the cost of switching and transport costs for unlimited monthly residential usage.

Unlimited residential local toll service (also referred to as “intraLATA toll”) was not included in the original application, but was considered in the application because it was one of the services included in the optional local calling plan proposed by Frontier in AL 902. The price floor for unlimited residential local toll service is essential in verifying that each service in Frontier’s optional local calling plan covers its respective costs in AL 902, which the parties now seek to consolidate with this application. Frontier and SureWest revised the existing floor for intraLATA toll service with an agreed-upon calculation in their joint stipulation. The revised floor for unlimited residential local toll service is calculated in a cost study presented in Brockmann testimony Exhibit B.

Telecommunications Division staff have reviewed this cost study and found it to be consistent with the IRD principles for the establishment of price floors.

Frontier included cost studies, which were placed under seal, supporting extended area service and zone usage management with its application. The joint stipulation adopted the proposed floors for these two services.

Telecommunications Division staff have reviewed these costs studies and also found them to be consistent with IRD principles of imputation and the establishment of price floors.

Discussion

The joint stipulation is an uncontested "all-party" settlement. The Commission applies two complementary standards to evaluate such agreements. The first standard, set forth in Rule 51.1(e) of the Commission's Rules of Practice and Procedure and applicable to both contested and uncontested agreements, requires that the "settlement is reasonable in light of the whole record, consistent

with law, and in the public interest." The second standard applies to all-party settlements, and requires that all active parties support the proposed settlement, the parties fairly represent all affected interests, no settlement term contravenes statutory provisions or prior Commission decisions, and settlement documentation provides the Commission with sufficient information to permit it to discharge its future regulatory obligations. *San Diego Gas & Electric*, 46 CPUC 2d 538 (1992).

We turn first to the Rule 51.1(e) standards. The joint stipulation is reasonable in light of the whole record because it establishes price floors for each service that are consistent with Frontier's other retail offerings. Similarly, the joint stipulation is consistent with law because it will bring Frontier's price floors into compliance with the pricing flexibility requirements of the IRD decision. The joint stipulation is in the public interest because it will allow Frontier to offer consumers additional services in a competitive telecommunications market. Consequently, we conclude that the settlement agreement meets the Rule 51.1 standards.

The standards for all-party settlements are also met. Frontier and SureWest are the only parties to this proceeding. SureWest represents the interests of competing service providers, while Frontier represents its own interests. As noted above, the joint stipulation is consistent with the law, and the cost studies provide the Commission with sufficient information to permit it to discharge its future regulatory obligations.

Therefore, the joint stipulation satisfies the Commission's requirements for settlements under Rule 51 and the all-party settlement standards. Accordingly, we will approve it.

Category and Need for Hearing

In Resolution ALJ 176-3147, dated February 10, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we affirm that this is a ratesetting proceeding, and that hearings are not necessary.

Waiver of Review

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Dian Grueneich is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. Both parties support the joint stipulation, with redacted confidential exhibit 1, appended hereto as Attachment A.
2. The proposed price floors are consistent with Frontier's other retail service rates.
3. The price floors adopted in this decision are necessary for services proposed to be offered pursuant to Frontier's ALs 898, 899, 900 and 902 and their respective supplements.
4. Effective May 12, 2005, the Telecommunications Division approved ALs 898, 899 and 900, and respective supplements, on an interim basis pending resolution of this application. Today's approval of the floors renders the interim approval permanent.

Conclusions of Law

1. The proposed price floors for extended area service, zone usage measurement service, residential intraLATA toll service, and residential local measured service are reasonable.
2. Frontier's ALs 902, 902A and 902B, should be consolidated with this application and approved.
3. The joint stipulation and redacted Exhibit 1, appended hereto as Attachment A, is reasonable in light of the whole record, consistent with law, and in the public interest.
4. The joint stipulation should be approved.
5. Today's order should be made effective immediately.

O R D E R**IT IS ORDERED** that:

1. The joint stipulation and redacted Exhibit 1 appended to this decision as Attachment A is approved.
2. Citizens Telecommunications Company of California dba Frontier Communications' Advice Letters 902, 902A and 902B are consolidated with this application, and are approved as modified.
3. Frontier shall file an advice letter within 20 days from the effective date of this decision to remove the footnote references in ALs 898, 899, and 900, and respective supplements, indicating that the advice letters are approved on an interim basis.
4. The Commission preliminarily determined that hearings would be required in this proceeding. Hearings have not been held, and the preliminary determination has been changed from "Yes" to "No."

This order is effective today.

Dated _____, at San Francisco, California.